

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3578 of 2000

to

FIRST APPEAL No 3592 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

versus

JUHAJI HALAJI THAKOR DECD. THRO' HEIRS JIVAJI JUHAJI

Appearance:

MR ND GOHIL, AGP for Appellants
MR AJ PATEL for Respondents

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE M.C.PATEL

Date of decision: 26/12/2000

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. Appeals admitted. Mr. A.J. Patel waives service of notice of Appeal for respondents - original claimants. On a joint request of the learned counsel for the respective parties, these Appeals are taken up for final hearing today.

2. These are Appeals under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code at the instance of the State and the acquiring body challenging the common judgment and award of the Reference Court under Section 18 of the said Act.

3. The lands under acquisition were required for the Narmada Project (Main Canal), the acquisition of which commenced with publication of Section 4 Notification on 11th June, 1990. The lands are situated in the village Sabaspur, Taluka Kalol, District Mehsana. The Reference Court after appreciating the evidence on record determined the market value of the acquired lands at Rs.48/- per sq. mtr. and granted other statutory allowances due to the claimants on the basis of this market value.

4. The appellants herein firstly sought to contend that the references were barred by limitation. In this context, there is no controversy, as noted in the judgment by the Reference Court, that the award under Section 11 of the Act was declared on 30th June, 1992, whereas the land holders made an application for reference under Section 18 on 30th November, 1993.

4.1 The Reference Court on the pleadings and evidence on record found that the references have been filed within time in as much as the Special Land Acquisition Officer has failed to establish how and in what manner they are beyond limitation. Firstly, it is noted that it is not the case of the State that the land holders and/or the representatives were present when the award was declared. Consequently, the limitation would not commence to run from the date of the award. The Reference Court has then observed that the case of the claimants to the effect that the reference applications have been filed within a period of six months from the date of knowledge is required to be accepted since the State has not established, by appropriate evidence, any

fact to the contrary. We may however note that the learned counsel for the respondent claimants states at the bar that notices under Section 12(2) of the Act were, in fact, served on each of the respondent land holders on 28th October, 1993. The learned counsel for the appellants is unable to dispute this statement. It would therefore also appear that the reference applications have been made within six weeks of the date of service issued under Section 12(2) of the Act. There is, therefore, no substance in the contention as to limitation and the same therefore deserves to be rejected.

5. It was then sought to be urged for the appellants that the market value determined by the Reference Court at Rs.48/- per sq. mtr. is not justified on the facts and evidence on record.

6. As against this, the learned counsel for the respondent claimants pointed out that the villages of Sabaspur, Jaspur, Serisa and Borisana are not only contiguous to each other but also have parity of value since they are of equal fertility etc. We find from evidence that this is so.

6.1 Even otherwise, there is not only adequate but ample evidence on record to justify the market value of lands of village Sabaspur at Rs.48/- per sq. mtr.

7. Exh.38 is an earlier award under Section 18 of the Act from the village Sabaspur, wherein the Section 4 Notification is only 1 month apart, wherein the market value has been determined at Rs.48/- per sq. mtr. It is stated that the Appeals filed by the State challenging Exh.38 are admitted and pending before this court, and wherein the land holders have also filed cross objections. Therefore, for the present, we do not rely upon this document Exh.38 for any particular purpose.

7.1 Exh.39 is a decision of this court in First Appeal Nos.43 of 1998 to 54 of 1998, pertaining to acquisition of lands from the village Jaspur, wherein the Notification under Section 4 is dated 3rd December, 1985, wherein this court had allowed compensation at the rate of Rs.52/- per sq. mtr. and against which the SLP filed by the State was dismissed by the Supreme Court. It is pertinent to note that Jaspur is adjacent to the instant village Sabaspur, and of equal fertility, and the Section 4 Notification pertaining to Jaspur was four and a half years prior to the instant Notification.

7.2 Exh.40 is an earlier award under Section 18 of the Act pertaining to acquisition from the village Vadsar wherein the Section 4 Notification was dated 12th March, 1985 i.e. to say, more than 5 years prior to the instant Notification. The Reference Court in this case determined the market value at Rs.40/- per sq. mtr.

7.3 Exh.42 is an award under Section 18 of the Act in respect of acquisition from the village Serisa, wherein the lands were acquired for the very same purpose and project, and Section 4 Notification was dated 19th May, 1990 i.e. to say, very approximate to the instant Notification. The Reference court had determined the market value at Rs.48/- per sq. mtr., and the First Appeals filed by the State challenging the said award (Exh.42) were dismissed by this very bench on 19th December, 2000.

7.4 Exh.43 is also a judgment in an earlier reference under Section 18 of the Act pertaining to acquisition of lands from the village Serisa, wherein the lands were acquired for the same project and purpose and the Section 4 Notification was dated 19th July, 1990 i.e. to say, almost within a month. In this case, the Reference Court had awarded Rs.48/- per sq. mtr., and the First Appeals filed by the State in First Appeal Nos.570 to 578 of 2000 were dismissed by this very bench on 19.12.2000.

7.5 So far as Exhs.51 and 52 are concerned, although the Reference Court has awarded Rs.25/- per sq. mtr. and Rs.30/- per sq. mtr. respectively, we may only note that in each of these references decided under Section 18, the claimants have preferred Appeals before this court, which are admitted and pending final hearing.

8. Thus, once it is established that lands situated in the instant village Sabaspur are at par with the lands of the contiguous villages Jaspur, Serisa and Borisana, in terms of fertility, input costs, agricultural yield, net annual income etc., the determination of market value by the higher courts in respect of the latter three villages would be a fair guide to the determination of market value in respect of the instant village Sabaspur.

8.1 As already discussed hereinabove, acquisition of lands from the village Jaspur was agitated upto the Supreme Court, whereby the market value of Rs.52/- per sq. mtr. was confirmed. Similarly, acquisition of lands from the village Serisa as also acquisition of lands from village Borisana have both been dealt with in a number of groups before this court and also before this

very bench, whereby the market value for both these villages has been confirmed at Rs.48/- per sq. mtr., in respect of Section 4 Notifications within two to three months on either side of the instant Notification. Thus, even on this parity of reasoning we find that the market value determined by the Reference Court at Rs.48/- per sq. mtr. is both reasonable and justifiable, and in any case, not so excessive as to require interference by way of the present Appeals. These appeals are, therefore, dismissed with no orders as to costs. It is expected that the appellants shall deposit the amount of the compensation before the Reference Court separately in each Land Reference Case as expeditiously as possible and preferably, before 31st March, 2001.

hki